

complainant alleges to violate one or more of the rules contained in this subpart, and such negotiation is unrelated to any existing contract between the complainant and the television broadcast station; or

(3) The complainant has notified the television broadcast station that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules contained in this subpart.

(f) *Termination of rules.* This section shall terminate at midnight on December 31, 2005.

[65 FR 15575, Mar. 23, 2000, as amended at 68 FR 52127, Sept. 2, 2003]

§ 76.66 Satellite broadcast signal carriage.

(a) *Definitions*—(1) *Satellite carrier.* A satellite carrier is an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or a service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

(2) *Secondary transmission.* A secondary transmission is the further transmitting of a primary transmission simultaneously with the primary transmission.

(3) *Subscriber.* A subscriber is a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(4) *Television broadcast station.* A television broadcast station is an over-the-air commercial or noncommercial television broadcast station licensed by

the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(5) *Television network.* For purposes of this section, a television network is an entity which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(6) *Local-into-local television service.* A satellite carrier is providing local-into-local service when it retransmits a local television station signal back into the local market of that television station for reception by subscribers.

(b) *Signal carriage obligations.* (1) Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station, shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of title 47, United States Code, and other paragraphs in this section.

(2) No satellite carrier shall be required to carry local television broadcast stations, pursuant to this section, until January 1, 2002.

(c) *Election cycle.* In television markets where a satellite carrier is providing local-into-local service, a commercial television broadcast station may elect either retransmission consent, pursuant to section 325 of title 47 United States Code, or mandatory carriage, pursuant to section 338, title 47 United States Code.

(1) The first retransmission consent-mandatory carriage election cycle shall be for a four-year period commencing on January 1, 2002 and ending December 31, 2005.

(2) The second retransmission consent-mandatory carriage election cycle, and all cycles thereafter, shall be for a period of three years (e.g. the second election cycle commences on January 1, 2006 and ends at midnight on December 31, 2008).

(3) A commercial television station must notify a satellite carrier, by July 1, 2001, of its retransmission consent-

mandatory carriage election for the first election cycle commencing January 1, 2002.

(4) Except as provided in paragraphs (d)(2) and (d)(3) of this section, local commercial television broadcast stations shall make their retransmission consent-mandatory carriage election by October 1st of the year preceding the new cycle for all election cycles after the first election cycle.

(5) A noncommercial television station must request carriage by July 1, 2001 for the first election cycle and must renew its carriage request at the same time a commercial television station must make its retransmission consent-mandatory carriage election for all subsequent cycles.

(d) *Carriage procedures*—(1) *Carriage requests.* (i) An election for mandatory carriage made by a television broadcast station shall be treated as a request for carriage. For purposes of this paragraph concerning carriage procedures, the term election request includes an election of retransmission consent or mandatory carriage.

(ii) An election request made by a television station must be in writing and sent to the satellite carrier's principal place of business, by certified mail, return receipt requested.

(iii) A television station's written notification shall include the:

- (A) Station's call sign;
- (B) Name of the appropriate station contact person;
- (C) Station's address for purposes of receiving official correspondence;
- (D) Station's community of license;
- (E) Station's DMA assignment; and
- (F) For commercial television stations, its election of mandatory carriage or retransmission consent.

(iv) Within 30 days of receiving a television station's carriage request, a satellite carrier shall notify in writing:

(A) those local television stations it will not carry, along with the reasons for such a decision; and

(B) those local television stations it intends to carry.

(v) A satellite carrier is not required to carry a television station, for the duration of the election cycle, if the station fails to assert its carriage rights by the deadlines established in this section.

(2) *New local-into-local service.* (i) A new satellite carrier or a satellite carrier providing local service in a market for the first time on or after July 1, 2001, must notify local television stations of its intent to provide local-into-local service at least 60 days before it intends to provide service or decides to enter into a new television market. This notification shall include information on the location of the satellite carrier's designated local receive facility in that particular market.

(ii) A local television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, no more than 30 days after the station's receipt of the satellite carrier's notice of intent to provide local-into-local service in a new television market. This written notification shall include the information required by paragraph (d)(1)(iii) of this section.

(iii) A satellite carrier shall commence carriage of a local station by the later of 90 days from receipt of an election of mandatory carriage or upon commencing local-into-local service in the new television market.

(iv) Within 30 days of receiving a local television station's election of mandatory carriage in a new television market, a satellite carrier shall notify in writing: Those local television stations it will not carry, along with the reasons for such decision, and those local television stations it intends to carry.

(3) *New television stations.* (i) A television station providing over-the-air service in a market for the first time on or after July 1, 2001, shall be considered a new television station for satellite carriage purposes.

(ii) A new television station shall make its election request, in writing, sent to the satellite carrier's principal place of business by certified mail, return receipt requested, between 60 days prior to commencing broadcasting and 30 days after commencing broadcasting. This written notification shall include the information required by paragraph (d)(1)(iii) of this section.

(iii) A satellite carrier shall commence carriage within 90 days of receiving the request for carriage from

the television broadcast station or whenever the new television station provides over-the-air service.

(iv) Within 30 days of receiving a new television station's election of mandatory carriage, a satellite carrier shall notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station.

(4) Television broadcast stations must send election requests as provided in paragraphs (d)(1), (2), and (3) of this section on or before the relevant deadline.

(e) *Market definitions.* (1) A local market, in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, and

(i) In the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and

(ii) In the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

(2) A designated market area is the market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.

(3) A satellite carrier shall use the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates to define television markets for the first retransmission consent-election cycle commencing on January 1, 2002 and ending on December 31, 2005. The 2003-2004 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates shall be used for the second retransmission consent-mandatory carriage election cycle commencing January 1, 2006 and ending December 31, 2008, and so forth for each triennial election pursuant to this section. Provided, however, that a county deleted from a market by

Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999-2000 Nielsen Station Index Directory or any subsequent issue of that publication.

(4) A local market includes all counties to which stations assigned to that market are licensed.

(f) *Receive facilities.* (1) A local receive facility is the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

(2) A satellite carrier may establish another receive facility to serve a market if the location of such a facility is acceptable to at least one-half the stations with carriage rights in that market.

(3) Except as provided in 76.66(d)(2), a satellite carrier providing local-into-local service must notify local television stations of the location of the receive facility by June 1, 2001 for the first election cycle and at least 120 days prior to the commencement of all election cycles thereafter.

(4) A satellite carrier may relocate its local receive facility at the commencement of each election cycle. A satellite carrier is also permitted to relocate its local receive facility during the course of an election cycle, if it bears the signal delivery costs of the television stations affected by such a move. A satellite carrier relocating its local receive facility must provide 60 days notice to all local television stations carried in the affected television market.

(g) *Good quality signal.* (1) A television station asserting its right to carriage shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) To be considered a good quality signal for satellite carriage purposes, a television station shall deliver to the local receive facility of a satellite carrier either a signal level of -45dBm for UHF signals or -49dBm for VHF signals

at the input terminals of the signal processing equipment.

(3) A satellite carrier is not required to carry a television station that does not agree to be responsible for the costs of delivering a good quality signal to the receive facility.

(h) *Duplicating signals.* (1) A satellite carrier shall not be required to carry upon request the signal of any local television broadcast station that substantially duplicates the signal of another local television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) A satellite carrier may select which duplicating signal in a market it shall carry.

(3) A satellite carrier may select which network affiliate in a market it shall carry.

(4) A satellite carrier is permitted to drop a local television station whenever that station meets the substantial duplication criteria set forth in this paragraph. A satellite carrier must add a television station to its channel lineup if such station no longer duplicates the programming of another local television station.

(5) A satellite carrier shall provide notice to its subscribers, and to the affected television station, whenever it adds or deletes a station's signal in a particular local market pursuant to this paragraph.

(6) A commercial television station substantially duplicates the programming of another commercial television station if it simultaneously broadcasts the identical programming of another station for more than 50 percent of the broadcast week.

(7) A noncommercial television station substantially duplicates the programming of another noncommercial station if it simultaneously broadcasts the same programming as another noncommercial station for more than 50 percent of prime time, as defined by § 76.5(n), and more than 50 percent outside of prime time over a three month

period. Provided, however, that after three noncommercial television stations are carried, the test of duplication shall be whether more than 50 percent of prime time programming and more than 50 percent outside of prime time programming is duplicative on a non-simultaneous basis.

(i) *Channel positioning.* (1) No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels.

(2) The television stations subject to this paragraph include those carried under retransmission consent.

(3) All local television stations carried under mandatory carriage in a particular television market must be offered to subscribers at rates comparable to local television stations carried under retransmission consent in that same market.

(4) Within a market, no satellite carrier shall provide local-into-local service in a manner that requires subscribers to obtain additional equipment at their own expense or for an additional carrier charge in order to obtain one or more local television broadcast signals if such equipment is not required for the receipt of other local television broadcast signals.

(5) All television stations carried under mandatory carriage, in a particular market, shall be presented to subscribers in the same manner as television stations that elected retransmission consent, in that same market, on any navigational device, on-screen program guide, or menu provided by the satellite carrier.

(j) *Manner of carriage.* (1) Each television station carried by a satellite carrier, pursuant to this section, shall include in its entirety the primary video, accompanying audio, and closed captioning data contained in line 21 of the vertical blanking interval and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. For noncommercial educational

television stations, a satellite carrier must also carry any program-related material that may be necessary for receipt of programming by persons with disabilities or for educational or language purposes. Secondary audio programming must also be carried. Where appropriate and feasible, satellite carriers may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the local receive facility.

(2) A satellite carrier, at its discretion, may carry any ancillary service transmission on the vertical blanking interval or the aural baseband of any television broadcast signal, including, but not limited to, multichannel television sound and teletext.

(k) *Material degradation.* Each local television station whose signal is carried under mandatory carriage shall, to the extent technically feasible and consistent with good engineering practice, be provided with the same quality of signal processing provided to television stations electing retransmission consent. A satellite carrier is permitted to use reasonable digital compression techniques in the carriage of local television stations.

(l) *Compensation for carriage.* (1) A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the mandatory carriage requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the receive facility of the satellite carrier.

(2) A satellite carrier may accept payments from a station pursuant to a retransmission consent agreement.

(m) *Remedies.* (1) Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations.

(2) The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations.

(3) A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission, in accordance with § 76.7 of title 47, Code of Federal Regulations. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(4) The satellite carrier against which a complaint is filed is permitted to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(5) The Commission shall determine whether the satellite carrier has met its obligations under this section. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of this section, it shall dismiss the complaint.

(6) The Commission will not accept any complaint filed later than 60 days after a satellite carrier, either implicitly or explicitly, denies a television station's carriage request.

[66 FR 7430, Jan. 23, 2001, as amended at 66 FR 49135, Sept. 26, 2001]

§ 76.70 Exemption from input selector switch rules.

(a) In any case of cable systems serving communities where no portion of the community is covered by the predicted Grade B contour of at least one full service broadcast television station, or non-commercial educational television translator station operating with 5 or more watts output power and where the signals of no such broadcast stations are "significantly viewed" in the county where such a cable system is located, the cable system shall be exempt from the provisions of § 76.66.